

FCC MAIL SECTION

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Federal Communications Commission

FCC 98-64

DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In re)	
)	
JERRY SZOKA)	CIB Docket No. 98-48
Cleveland, Ohio)	
)	
Order to Show Cause Why a)	
Cease and Desist Order Should Not Be Issued)	

**ORDER TO SHOW CAUSE AND
NOTICE OF OPPORTUNITY FOR HEARING**

Adopted: April 2, 1998

Released: April 6, 1998

By the Commission:

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Jerry Szoka ("Szoka"). For the reasons that follow, we order Szoka to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 C.F.R. § 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be imposed for violations of the Act and the rules.

2. **Background.** On November 4, 1996, James A. Bridgewater ("Bridgewater"), the Detroit Field Office Director of the Commission's Compliance and Information Bureau, received information from Mark Krieger, Chairman of the Society of Broadcast Engineers, concerning an unauthorized radio station operating as "The Grid," on 96.9 MHz. On February 20, 1997, Bridgewater sent a letter under his signature by certified mail to "The Grid." In pertinent part, the letter stated:

Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. §301, and may subject the operator to substantial monetary fines, *in rem* forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. §§ 401, 501, 503, 510. Because unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with the legal requirements mentioned above. **Operation of radio transmitting equipment without proper authority granted by the Commission should cease immediately.** (Emphasis in the original).

The letter also informed "The Grid" that a response was required within 15 days of receipt of the letter. On March 31, 1997, the Commission received an unsigned reply dated March 26, 1997, from Szoka, in which he acknowledged receipt of Bridgewater's letter and stated that he would take necessary actions to meet FCC requirements. He also urged the Commission to ignore the unlicensed operation because the station is top quality, provides a much needed community service without commercials, and is not

interfering with other stations.

3. On June 11, 1997, Bridgewater sent Szoka a second warning letter regarding the unlicensed operation on 96.9 MHz. That letter also required a reply within 15 days of receipt. Commission records reveal no response from Szoka.

4. Between June 18, 1997, and September 9, 1997, the Commission received four additional complaints regarding the unlicensed broadcast operation at 96.9 MHz. Each complaint indicated that unauthorized transmissions were continuing.

5. On September 11, 1997, FCC Agents Patrick G. Patterson ("Patterson") and Paul S. Mako ("Mako") drove to Cleveland, Ohio, in a Commission mobile direction finding vehicle. At approximately 5:10 p.m., Patterson and Mako positively identified the location of the transmitted signal as emanating from 1281 West 9th Street, Cleveland, Ohio. This address is the location of "The Grid," a commercial night club. Patterson and Mako observed that the transmitting antenna was located at the top of the 4 1/2 story building on the north side and approximately half way between the front and back of the building. Patterson and Mako also determined that the coaxial cable connected to the antenna entered the building housing the establishment known as "The Grid." The agents took a field strength measurement of the signal identified as "The Grid." The measurement was made approximately 171 meters (561 feet) from the transmitting antenna and recorded a value of 35.55 millivolts/meter (33,550 microvolts/meter). This measurement far exceeds the limit set out in Section 15.239(b) of the rules, 47 C.F.R. § 15.239(b), which allows unlicensed operation of a low power radio transmitter in the FM broadcast band provided the signal level is below 250 μ V/m at a distance of 3 meters. The 96.9 FM signal was also monitored via the direction finding vehicle's normal AM/FM radio by Patterson and Mako while exiting the Cleveland area and heading west on I-90. The signal could be heard for approximately 18.6 miles. On Friday, March 19, 1998, at 4:57 pm, FCC Agent Patterson confirmed that the station was still operating.

6. **Discussion.** Section 301 of the Act, 47 U.S.C. § 301, provides in pertinent part:

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State . . . to another place in the same State . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See U.S. v. Medina, 718 F. Supp. 928 (S.D. Fla. 1989); U.S. v. Weiner, 701 F.Supp. 15 (D.Mass. 1988), aff'd, 887 F.2d 259 (1st Cir. 1989); Stephen Paul Dunifer, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and Order to Show Cause and Notice of Apparent Liability, 50 Fed. Reg. 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Szoka has violated and may currently be violating Section 301 of the Act.

ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 312(c) of the Act,

Jerry Szoka **IS DIRECTED TO SHOW CAUSE** why he should not be ordered to **CEASE AND DESIST** from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

- a. To determine whether Jerry Szoka has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.
- b. To determine whether, based on the evidence adduced pursuant to the preceding issue, Jerry Szoka should be ordered to cease and desist from violating Section 301 of the Act.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 312(d) of the Act, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues a and b.

9. **IT IS FURTHER ORDERED** that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

10. **IT IS FURTHER ORDERED** that, to avail himself of the opportunity to be heard, Jerry Szoka, pursuant to Sections 1.91(c) of the rules, in person or by attorney, **SHALL FILE** in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

11. **IT IS FURTHER ORDERED** that, without regard as to whether the hearing record warrants an order that Jerry Szoka cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an **ORDER FOR FORFEITURE** in an amount not to exceed \$11,000¹ shall be issued against Jerry Szoka for the alleged violations of Section 301 of the Act.

12. **IT IS FURTHER ORDERED** that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

13. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service **SHALL BE ADDRESSED** to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. §§ 1.80(b)(3), (b)(4), (b)(5); see also In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997)(petitions for reconsideration pending).

14. **IT IS FURTHER ORDERED** that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail - Return Receipt Requested to:

Jerry Szoka
The Grid
1281 West 9th Street
Cleveland, Ohio 44113

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary